

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 4194 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA
and
Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

GEB

Versus

RAVUBHA BHAVSANG JADEJA

Appearance:

MR HS MUNSHAW for Petitioners

MR AJ YAGNIK for Respondent No. 1, 2, 3, 4

CORAM : MR.JUSTICE D.C.SRIVASTAVA
and
MR.JUSTICE H.K.RATHOD

Date of decision: 01/03/2000

ORAL JUDGEMENT

Admit. This is an appeal against the judgment and decree dated 16th March, 1999 passed by the learned 2nd Jt. Civil Judge, S.D., Jamnagar in Special Civil Suit No. 121 of 1996. The appeal has been admitted today and, with the consent of the learned counsel for the appellant Shri H.S. Munshaw and Shri A.J. Yagnik for the respondents, the appeal is being disposed of finally without summoning the record.

2. Learned counsel for the parties have been heard.

It is not necessary to discuss in detail the facts of the case out of which the present appeal arose. Certain facts are not in dispute. The accident is not disputed. It is also not disputed that on account of the accident, the deceased Jashubha Ravubha Jadeja expired. The only dispute in this appeal is regarding the quantum of compensation and the interest.

3. Learned counsel for the appellant Shri Munshaw has contended that the interest at the rate of 15% p.a. awarded by the Court below is slightly excessive and according to his contention, reasonable interest can be 12 % p.a. We are of the view that the contention of Shri Munshaw has substance. The Court below was not justified in awarding interest at the rate of 15% p.a. from the date of the suit till the realisation. We are, therefore, inclined to reduce the rate of interest at 12% p.a. from the date of the suit till the realisation of the decretal amount.

4. The second controversy for determination in this appeal is regarding computation of the annual income of the deceased. Upon examination of the judgment of the lower Court and on the facts and circumstances of the case, we are of the opinion that the assessment of income made by the lower court does not suffer from any manifest illegality or error. The assessment of income made by the Court below is just and reasonable. The annual income of the deceased was assessed between Rs. 20000/- to Rs. 25000/-. This income took care of the agricultural income for which there could be no any direct evidence. According to the Court below, the monthly income of the deceased should have been between Rs. 2000/- to Rs. 2100/-. The age of the deceased was found by the tribunal to be 52 years. However, there was no definite evidence regarding the age of the deceased. The medical report shows that the age of the deceased could be between 46 to 56 years. Since the body of the deceased was electrocuted, correct assessment of the age could not be done by the Doctor and hence there was variation of 10 years in the assessment of age. In these circumstances,

we feel that if the average between 46 and 56 years assessed by the medical evidence is taken, it comes to 51 years. The Court below has assessed the age of the deceased at 52 years. We, therefore, hold that the age of the deceased was 51 years.

On this calculation, Mr. Munshaw has contended that the multiplier of 12 adopted by the Court below was incorrect and he suggested that it should be reduced to 10. However, chart of the second Schedule of the Motor Vehicles Act to sec. 163A provides that if the age is above 50 years but not exceeding 55, multiplier should be 11. No multiplier of 10 finds place in the Schedule and consequently, in our assessment, the Court below was in error in adopting the multiplier of 12. We are unable to accept the contention of Mr. Munshaw that the multiplier of 10 should be adopted.

The Court below after calculating the income concluded that the contribution of the deceased to the common family fund can safely be assessed at Rs. 1400/p.m. This was done after deducting 1/3rd income of the deceased. In this way, annual dependency of the deceased to the common family fund was calculated by the court below at Rs. 16,800/-. If the multiplier of 11 is to be adopted, then, the compensation would work out to Rs. 1,84,800 and over this amount, an amount of Rs. 20,000/- as compensation on other heads calculated by the Court below is to be added, then, the total compensation would come to Rs. 2,04,800/-. Shri Munshaw, however, contended that since there is no definite evidence regarding the age of the deceased, in the interest of justice, multiplier of 10 should be adopted and to compensate this deficiency, further sum of Rs. 2000.00 may be granted. If the amount is worked out by adopting multiplier of 10, then, the compensation could be Rs. 1,68,000/-. Adding Rs. 20,000/- thereto, it will come to Rs. 1,88,000/-. Since there is no multiplier of 10 and multiplier of 11 could be adopted, we feel that if the total compensation of Rs. 1,88,000/- is enhanced to Rs.1,90,000/-, it will meet the ends of justice.

In view of the above discussions, we allow the appeal partly. The amount of compensation payable to the claimants would be Rs.1,90,000/-with 12 per cent interest thereon from the date of the suit till actual realization. Other directions of the Court below for disbursement of the amount shall remain undisturbed. The appeal is accordingly disposed of with no order as to costs.

In view of the above order passed in the appeal,
the civil application shall not survive. The same shall,
therefore, stands disposed of as such with no order as to
costs.

01.03.2000 (D.C.Srivastava,J.)

(H.K.Rathod,J.)

Vyas